IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.808 OF 2003
IN
SUIT NO.761 OF 1990

Surendra Kapoor ....Appellant
V/s.
Sukhdev R. Gupta & Ors. ....Respondents

Mr.H. Devarajan, Senior Counsel with Mr.Nitin D. Vatkar and Mr.P.Manjarekar i/b Sunil & Co. for the Appellant.

None for the Respondents.

CORAM : DR.S. RADHAKRISHNAN & S.J. VAZIFDAR, JJ.
DATED : 7TH MARCH, 2006.

P.C. :-

1. Heard the learned counsel for the Appellant and none appears for the Respondents, though served. The above matter was on board yesterday. Yesterday none appeared for the Respondents, hence we had directed the learned counsel for the Appellant to give a fresh notice to the Respondents indicating that the matter will be taken up today. Accordingly a notice has been duly served on the learned advocate for Respondents yesterday itself. Again today none appears on behalf of the Respondents.

2. By this Appeal, the Appellant is challenging the judgment and order dated 10th September, 1997

whereby the suit filed by the Respondents has been decreed ex-parte. The said judgment and order impugned dated 10th September, 1997 reads as under :-

> "Heard Mr.Shetty for the Plaintiffs. Defendant and Advocate are absent despite of service.
>
> Affidavit of service dt.27-3-95, 27-3-95 and 24-1-96 are already on record. Affidavit of service dt.28-8-97 filed in pursuance of the directions of this Court on 27/8/97 are marked Exhibit 'A' collectively.
>
> Compilation of documents tendered by advocate Shetty taken on record and marked Exhibit 'B' collectively. Perused the Plaint and compilation of documents.
>
> Decree in terms of prayers (a), (b), (c) and (d).
>
> Refund as per rules.
>
> Certified copy expedited."

3. The learned counsel for the Appellant brought to our notice the prayers in the above suit which read as under :-

> "a) That it be declared that the alleged deed of conveyance dated 18th May 1972 executed by the plaintiff in favour of the defendant no.1 purporting to convey the plaintiff's immoveable property admeasuring about 740 sq.

yds. i.e. about 616-500 sq. mtrs. structures standing thereon situate and lying and being at Kurla in the Registration sub-district of Bombay of the Bombay District bearing survey no.183, Hissa No.6(part), CTS No.866 and Karta No.556 with sheds duly assessed by the Bombay Municipal Corporation bearing No.2737(3) 29/B in the name of plaintiff is bad-in-law, fraudulent, null and void and not binding on the plaintiff.

b) That it be further declared that the so-called agreement to sell, the plaintiff's said property, dated 8th August 1985 purported to have been executed by the defendant no.1 in favour of the defendants no.2 and 3 is ex-facie without any legal foundation, bad in law, fraudulent, null and void and not binding on the plaintiffs.

c) That this Hon'ble Court be pleased to decree and order that the said instruments dated 18th May 1972 registered with the sub-registrar of Assurances, Bandra at Sr.No.394/1472 on 19th May 1972 be delivered up and cancelled.

d) That the defendants, their servants and agents be restrained by a permanent order of injunction from entering into remaining at or carrying out any construction work in the said property of the plaintiff bearing survey no.183, Hissa No.6(part) C.T.S. No.866, Khata No.556, bearing Municipal Assessment no.L-2737(3), 39(B) lying and being at Halav Pool, Kurla, Bombay 400 070 in the Registration sub-district of Bandra of the Bombay Suburban Dist."

4. The learned Senior counsel for the Appellant submits that in the facts and circumstances of the case and especially in view of the reliefs claimed in the suit, the suit could not have been decreed merely on the basis of tendering of documents.

5. The learned Senior counsel for the Appellant in support of his contention strongly relied upon a judgment of the Supreme Court in the case of - *Balraj Taneja and another .versus. Sunil Madan and another, reported in (1999) 8 Supreme Court Cases, 396*, wherein the Supreme Court in paragraphs 29, 41, 45 and 46 has held as under :-

"29. As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression "the court may, in its discretion, require any such fact to be proved" used in sub-rule (2) of Rule 5 of Order 8, or the expression "may make such order in relation to the suit as it thinks fit" used in Rule 10 of Order 8.

41. There is yet another infirmity in the case which relates to the "judgment" passed by the Single Judge and upheld by the Division Bench.

45. Learned counsel for Respondent 1 contended that the provisions of Order 20 Rule 4(2) would apply only to contested cases as it is only in those cases that "the points for determination" as mentioned in this rule will have to be indicated, and not in a case in which the written statement has not been filed

by the defendants and the facts set out in the plaint are deemed to have been admitted. We do not agree. Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex-parte and is ultimately decided as an ex-parte case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved.

46. An attempt was made to contend that the definition of judgment as set out in Section 2(9) of the Code would not be applicable to the judgment passed by the Delhi High Court in its original jurisdiction wherein the proceedings are regulated by the provisions of the Delhi High Court Act, 1966. It is contended that the word "judgment" used in the Delhi High Court Act, 1966 would not take its colour from the definition of "judgment" contained in Section 2(9) of the Code of Civil Procedure. We do not intend to enter into this controversy, fortunately as it is not contended that the Code of Civil Procedure does not apply, but we cannot refrain from expressing that even if it were so, the Delhi High Court is not absolved of its obligation to write a judgment as understood in common parlance. Even if the definition were not contained in Section 2(9) or the contents thereof were not indicated in Order 20 Rule 4(2) CPC, the judgment would still mean the process of reasoning by which a Judge decides a case in favour of one party and against the other. In judicial proceedings, there cannot be arbitrary orders. A Judge cannot merely say "suit decreed" or "suit dismissed". The whole process of reasoning has to be set out for deciding the case one way or the other. This infirmity in the present judgment is glaring and for that reason also the judgment cannot be sustained."

6. In the light of the above judgment of the

Supreme Court and in the facts and circumstances of the case, we are inclined to quash and set-aside the impugned judgment and order dated 10th September, 1997 passed by a learned Single Judge, accordingly the same stands quashed and set aside. The suit is remanded back to the learned Single Judge for being heard strictly on its own merits and in accordance with law afresh. The Appellant is permitted to file the written statement in the above suit No.761 of 1990 within four weeks from today. The Appeal stands disposed of accordingly. Hearing of the suit pending before the learned single Judge is expedited.

(DR.S. RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)